

# HOGAN & HARTSON

L.L.P.

DOCKET FILE COPY ORIGINAL

LINDA L. OLIVER  
PARTNER  
DIRECT DIAL (202) 637-6527

March 23, 1998

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

*BY HAND DELIVERY*

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, DC 20554

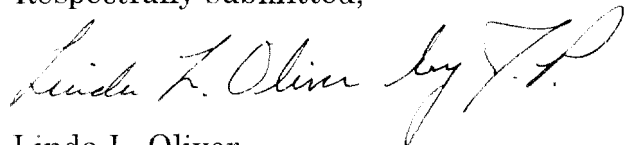
**Re: Petition for Expedited Declaratory Rulings  
CC Docket 98-5**

Dear Ms. Salas:

Pursuant to the FCC's Public Notice DA 98-130, released January 26, 1998, and modified by Order DA 98-339, released February 20, 1998, enclosed for filing in the above-referenced docket are the original and twelve copies of the "Comments of LCI International Telecom Corp."

Please return a date-stamped copy of the enclosed filing (copy provided).

Respectfully submitted,



Linda L. Oliver  
Counsel for LCI International Telecom  
Corp.

Enclosures

cc: Janice Myles  
ITS, Inc.

0412

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of  
Petition for Expedited Declaratory  
Rulings

CC Docket No. 98-5

**COMMENTS OF LCI INTERNATIONAL TELECOM CORP.**

Anne K. Bingaman  
Douglas W. Kinkoph  
LCI INTERNATIONAL TELECOM CORP.  
8180 Greensboro Drive, Suite 800  
McLean, VA 22102

Peter A. Rohrbach  
Linda L. Oliver  
HOGAN & HARTSON L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

Rocky N. Unruh  
MORGENSTEIN & JUBELIRER  
One Market  
Spear Street Tower, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

Eugene D. Cohen  
326 West Granada Road  
Phoenix, AZ 85003

Counsel for  
LCI INTERNATIONAL TELECOM  
CORP.

March 23, 1998

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

\_\_\_\_\_  
In the Matter of )  
Petition for Expedited Declaratory )  
Rulings )  
\_\_\_\_\_)

CC Docket No. 98-5  
DA No. 98-130

**COMMENTS OF LCI INTERNATIONAL TELECOM CORP.**

LCI International Telecom Corp. ("LCI"), by its attorneys, hereby submits its initial comments in the above-referenced proceeding.

LCI filed the petition that started this proceeding just two months ago. The outpouring of interest from all quarters in this short time has been gratifying and productive. LCI appreciated the speed with which the Commission put the petition out for public comment. We strongly believe that our proposal offers the best chance of creating vigorous local service competition for all segments of the public. And we also think it creates the best environment for preserving that competition in the future with reduced regulation and enforcement.

LCI recognizes that ordinarily a petitioner would not file comments on its own petition. We look forward to reviewing the comments filed today by other parties and responding to them at the appropriate time. We nevertheless write separately here to

address briefly four questions that have arisen in discussions of the Fast Track plan around the country. We hope that this information will further assist other parties and the Commission in recognizing the benefits of promptly issuing the declaratory rulings we propose.

**1) Why doesn't the petition go further? Effective safeguards would require total separation, a 100 percent spin-off of the retail operations of the Regional Bell Operating Companies.**

Many have observed that the aims of the LCI petition would be even better served by a structure that completely spins off the retail operations of the RBOC. While LCI also would prefer such a structure, we by no means rule out that the Commission might have reason to mandate such a divestiture if RBOCs continue to violate the Telecom Act or circumstances otherwise dictate.

LCI is concerned, however, with creating competition for consumers quickly. That is what Fast Track is all about. We have assumed that RBOCs will resist a divestiture requirement that effectively would deny them the ability to provide either local network functions or interLATA and other services (since either the NetCo or the ServeCo would have to be completely divested under this view). We recognize that the Telecom Act permits at least a law-abiding RBOC to provide both network functions and services. Our Fast Track plan does so, albeit with structural safeguards that create conditions for competition to develop to challenge the RBOC local monopoly.

At the same time, the LCI plan does not reduce any legislative or administrative authority state commissions may have to order full separation. LCI has had numerous

expressions of interest from state commissions regarding its proposal. Illinois has opened a proceeding to examine the merits of structural separation, and whether and how it should apply to Ameritech. 1/ The Oklahoma Commission recently issued a notice of inquiry about why competition has been slow to develop, and included in its inquiry questions about whether it should use structural separation as a means to promote local competition. 2/ The National Association of Regulatory Utility Commissioners, at its winter meeting in March 1998, approved a resolution encouraging exploration of structural separation as a means of encouraging local competition. 3/

In short, if the RBOCs continue to resist providing access to their networks required by the Telecom Act and necessary for local competition, the remedy of full divestiture may become appropriate. But before going down that path, which almost by definition means that competition will be delayed for several more years, LCI believes that the Commission should give RBOCs the opportunity to separate their operations as proposed in our petition.

---

1/ Notice of Inquiry Concerning the Separation of Illinois Bell Telephone Company's Retail Operations from its Network Operations as a Means of Expediting Local Competitive Entry, Resolution, Adopted February 18, 1998.

2/ Before the Corporation Commission of the State of Oklahoma, Notice of Inquiry of the Oklahoma Corporation Commission Into the Status of Local Telephone Exchange Competition in Oklahoma and What If Any Steps Need to Be Taken to Improve or Encourage Competition, Cause No. RM 980000004, issued Feb. 11, 1998.

3/ NARUC Resolution Regarding the LCI Petition on the Separation of Wholesale and Retail Services for 271 Compliance, March 4, 1998.

**2) How does the petition fit with the Section 271 process already under way? Should the Commission wait until that process has had more time to work before granting the Fast Track petition?**

LCI strongly supports the Section 271 process. LCI's structural separation proposal in no way distracts the FCC or the DOJ from doing what needs to be done to ensure that markets are opened in a way that ensures sustained competition and protects the public interest. The LCI Fast Track approach is merely a type of "safe harbor" that, if met, gives the RBOC a rebuttable presumption of compliance with the checklist. It is appropriate to give the RBOC that presumption because regulators and the new entrants can be assured that the inherent conflicts that prevent meaningful compliance with the checklist elements will have been mitigated.

The FCC and the DOJ should continue to work to bring the RBOCs toward meeting the Section 271 checklist and the other tests of Section 271, including the public interest test, and should do so in an open, transparent process that protects the public interest. Within that process, the FCC and the DOJ should remain equally open to other ways in which transparent compliance with Section 271 may be attained. The structural separation model of the LCI petition is one such way. It is completely transparent, and avoids any perception of deal-making that could afflict the Section 271 checklist compliance process.

There is no reason that the FCC and the DOJ should not be pressing RBOCs, as they discuss their Section 271 petitions with them, to consider structural separation as a way to achieve compliance with Section 271. The FCC's Chief of the Competition Division recently suggested that, in his personal view, establishing a separate subsidiary

could be a way for the RBOCs to offer deregulated high-speed data services. <sup>4/</sup> LCI's proposal similarly advocates structural separation with the RBOCs as a way to enter the long distance market more rapidly. Of course, any separation plan must contain the minimum safeguards necessary to make structure an adequate substitute for regulation. The "Seven Minimums" of the LCI Fast Track proposal provide such a baseline. Again, the minimums admittedly are not as effective as complete divestiture. However, the Fast Track plan goes a long way to improve on the super-regulatory environment needed to prevent discrimination and cross-subsidization when an RBOC's network and retail service operations are integrated.

In short, grant of the declaratory rulings here does not interfere with the "conventional" Section 271 process. It merely gives the RBOCs a clear, bright-line way to comply with the law, and operates within the existing framework of Section 271.

LCI also would reemphasize that the Fast Track plan is at least as much about the post-interLATA entry world as it is about speeding Section 271 compliance. The Commission, states and Department of Justice still face the difficult challenge of creating effective processes for keeping local markets open if and when the RBOCs ever satisfy the initial requirements for interLATA authority. LCI is convinced that the difficulties it and other new entrants have experienced in trying to get into the local market, when the RBOCs supposedly have long distance entry as a strong incentive to cooperate in opening the market, will pale in comparison to the difficulties of keeping the market open once the RBOCs have been allowed into long distance. It is reported that the authorities are

---

<sup>4/</sup> "Strickling Suggests Separate Broadband Units For ILECs; 'Advanced Telecom' Plea Lauded," Telecommunications Reports, Vol. 64, No. 9 (March 2, 1998).

prepared to revoke an RBOC's permission to offer long distance service if the RBOC does not maintain open local markets, but the likelihood that this would ever really happen seems slim to LCI. Fast Track offers a way of mitigating an RBOC's inherent conflict of interest after entry by requiring arms-length transactions.

**3) Isn't LCI's proposed structural separation just like the Rochester and SNET plans, which have not been very effective in inciting local retail competition?**

LCI's proposal is not at all like the SNET and Rochester plans, and it is wrong to judge its prospects through the lens of the SNET/Rochester experiences. As noted above, the LCI proposal has seven key elements – the minimum elements required to make the proposal work – many of which are absent from the SNET and Rochester plans. The seven key elements are:

- NetCo and ServeCo would not share facilities, functions, services, employees or brand names.
- NetCo would not engage in any retail marketing, but would continue to service its existing customers on a transitional basis until those customers are won by ServeCo or other retail competitors.
- NetCo would deal with ServeCo only on an equal basis with all other new entrants – such as LCI – who use NetCo's network to provide local phone service.
- There must be substantial independent public ownership of ServeCo (approximately 40 percent or more).
- Independent directors would be on the ServeCo board, including representatives of the public ServeCo shareholders.
- Compensation for ServeCo management must be based only on ServeCo performance, not the performance of the RBOC holding company or NetCo.
- As a key transitional matter, ServeCo would not provide service to a NetCo customer.



Many of these elements were not present in the SNET or Rochester plans. For example, neither the SNET nor the Rochester plan called for public ownership of the retail affiliate. In both plans, the retail affiliate was a wholly owned subsidiary of the holding company. This gives the holding company – the RBOC in LCI's proposal – the incentive and the means to favor the retail affiliate over retail competitors. Likewise, neither the SNET plan nor the Rochester plan contained any restrictions on the method of calculating compensation of the retail affiliate's employees, officers or directors so that compensation had to be based solely on the retail affiliate's performance. There are numerous other ways in which the SNET and Rochester plans lacked features that would ensure the independence of the retail affiliate and eliminate the inherent conflict of interest in the combined wholesale/retail model. This is why it is incorrect to judge the promise of the LCI approach by the limitations of the SNET and Rochester plans.

- 4) The LCI petition is a voluntary alternative to the Section 271 process, and so far, no RBOC is stepping up to express interest. If there are no takers, why bother acting on the petition?**

LCI's petition asks the FCC to authorize Fast Track as a voluntary way of complying with Section 271. It would be entirely out of the ordinary for any RBOC to have expressed interest in Fast Track before the FCC has indicated how it will act upon it.

Moreover, as long as the RBOCs perceive that it may be possible to enter the long distance market without giving up the degree of control over the local exchange market that the Fast Track proposal would entail, it would be entirely unexpected that they would express any interest in it. But it is wrong for the RBOCs to expect to come out better

under the element-by-element checklist approach toward Section 271 approval than under Fast Track, for compliance with Section 271 is necessary in either case. The Fast Track proposal, if implemented, simply creates a path by which an RBOC can more rapidly establish the predicate for checklist compliance, and therefore can easily coexist with other paths to the same end.

Furthermore, LCI again emphasizes that the Fast Track plan is not just about Section 271. It is also about how to ensure that local competition continues after interLATA entry, with the minimum amount of regulation. LCI anticipates that the RBOCs may find Fast Track-level separation to be an attractive alternative to the kinds of detailed regulatory oversight that the FCC and states otherwise would need to impose on an integrated RBOC to prevent unlawful discrimination.

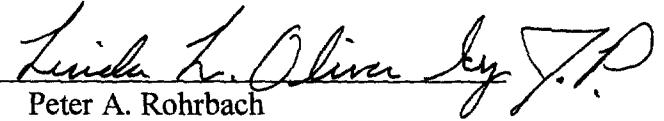
### **CONCLUSION**

These brief comments are not meant to anticipate the comments of other parties. LCI will respond to those comments fully on reply. However, in filing here, we emphasize our belief that the more closely other parties examine Fast Track, and the

balance it strikes under the Telecom Act as currently written, the more they will see that it provides the key to rapid and self-sustaining competition, with less regulation.

Respectfully submitted,

LCI INTERNATIONAL TELECOM  
CORP.

By:  J.P.

Anne K. Bingaman  
Douglas W. Kinkoph  
LCI INTERNATIONAL TELECOM CORP.  
8180 Greensboro Drive, Suite 800  
McLean, VA 22102

Peter A. Rohrbach  
Linda L. Oliver  
HOGAN & HARTSON L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

Rocky N. Unruh  
MORGENSTEIN & JUBELIRER  
One Market  
Spear Street Tower, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

Eugene D. Cohen  
326 West Granada Road  
Phoenix, AZ 85003

March 23, 1998

Counsel for  
LCI INTERNATIONAL TELECOM  
CORP.

## **CERTIFICATE OF SERVICE**

I, Barbara E. Clocker, hereby certify that on this 23rd day of March, 1998, copies of the foregoing Comments were served by hand delivery (where indicated) or by U.S. Mail, first class postage to the following:

William E. Kennard, Esq.\*  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Susan Ness, Esq.\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Harold Furchtgott-Roth, Esq.\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Michael K. Powell, Esq.\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Gloria Tristani, Esq.\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Robert J. Aamoth  
Steven A. Augustino  
Kelley Drye & Warren LLP  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036

Genevieve Morelli  
Executive Vice President  
CompTel  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Charles C. Acquard\*  
NASUCA  
1133 15th Street, N.W., Suite 550  
Washington, D.C. 20005

James Bradford Ramsay  
NARUC  
1201 Constitution Ave., N.W., Suite 1102  
P.O. Box 684  
Washington, D.C. 20044-0684

Ronald Binz, President  
Debra Berlyn, Executive Director  
John Windhausen, Jr., General Counsel  
Competition Policy Institute  
1156 15th Street, N.W., Suite 310  
Washington, D.C. 20005

Amy Zirkle\*  
Kecia Boney  
Lisa Smith  
MCI Telecommunications Corp.  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

James Blaszak  
Levine, Blaszak, Block, Boothby  
2001 L Street, N.W., Suite 900  
Washington, D.C. 20036

R. Morris  
Former Vice President, Government Affairs  
US One  
c/o 1320 Old Chain Bridge Road  
McLean, VA 22101

Keith Maydak  
Box 905  
Ray Brook, NY 12977

Blossom A. Peretz  
The State of New Jersey  
Division of the Ratepayer Advocate  
31 Clinton Street, 11th Floor  
Newark, NJ 07101

Gene Lafitte  
State of West Virginia  
Office of the Consumer Advocate  
7th Floor Union Building  
723 Kanawha Boulevard East  
Charlestown, West Virginia 25301

  
Barbara E. Clocker